



Community
Bankers
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of Illinois®

2005 SEP 21 AM 10 00



Representing Illinois' Real Community Banks

September 20, 2005

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

John F. Carter, Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square
Suite 2300
San Francisco, California 94105

Re: Comments in Opposition to FDIC Application #20051977; Wal-Mart's Application for Deposit Insurance and Industrial Bank Charter

Dear Chairman Powell and Regional Director Carter:

The Community Bankers Association of Illinois ("CBAI") submits this comment letter in opposition to the application filed by Wal-Mart Stores, Inc. ("Wal-Mart"), by which Wal-Mart seeks an industrial bank charter and federal deposit insurance as a nonmember bank chartered by the State of Utah. CBAI urges the denial of the Wal-Mart application and joins with many others, including the Independent Community Bankers of America, in requesting public hearings at which the adverse impact of a Wal-Mart bank charter can be adequately explored.

CBAI is proud to represent the interests of 507 financial institutions in Illinois, and CBAI member institutions can be found in each of Illinois' 102 counties. Illinois is home to more financial institution charters than any other state in our nation. It is a state with much demographic diversity, including a large agricultural base, urban centers (particularly in Chicago and surrounding areas), and numerous public and private universities located throughout the state. Despite geographic, occupational and cultural diversity throughout Illinois, the community-oriented financial institutions chartered here have a history of successful operation that is in large part attributable to two basic principles: they serve the financial interests of the consumers and businesses in their various communities, and they compete

against each other on a level playing field. It is CBAI's belief that the Wal-Mart application, if granted, will ultimately lead to the growth of a financial institution that will operate outside of those two basic principles and will result in an entity that is a threat not only to community banks that will operate at a competitive disadvantage but also to the safety of the banking system throughout the United States.

In the review and disposition of Wal-Mart's application, there is no legal or administrative process that obliges the FDIC to pretend that Wal-Mart does not have broader banking aspirations. Today, Wal-Mart appears "in sheep's clothing" suggesting that it only seeks a charter to accommodate limited back office processing activities relating to credit cards, debit cards and electronic check transfers. The fact that Wal-Mart's ultimate goal is to offer retail banking services is well-documented. Its efforts to obtain charters in recent years have been rebuffed by the United States Congress (i.e., through the Gramm-Leach-Bliley Act) and by the State of California (i.e., through legislation preventing Wal-Mart from acquiring a California "industrial bank"). Having been unsuccessful upon knocking at the front door, this applicant now knocks at a side door in its effort to obtain some level of entry into its next targeted marketplace.

The separation of banking and commerce in the United States has provided an essential buffer that prevents the economic engine represented by providers of financial services (e.g., banks) from being contaminated by conflicts of interest and by concentrations of resources. No commercial entity represents a larger or more likely contaminant to the current system's safety and soundness than Wal-Mart. Wal-Mart's tentacles are intertwined in one direction with its retail customers and in another direction with its suppliers. Wal-Mart's vast commercial enterprise and treasury would allow it to direct credit to persons in ways or subject to terms that a competing community bank may not be able to offer. A number of recent priorities of state and federal legislative bodies and regulators would be put to new tests. For example, can anyone accurately assess how a retail giant that also owns a banking charter would comply with restrictions on the use of customer information for non-banking purposes? Or, to state it another way, can anyone accurately assess how a retail giant that also owns a banking charter could find ways to use confidential customer information to benefit its own interests at the expense of its retail and/or financial institution competitors?

There are also numerous issues to examine regarding how a Wal-Mart financial institution would deal with the business interests of Wal-Mart suppliers. Would credit decisions and credit terms be based solely on the same sound underwriting principles that govern community banks, or would Wal-Mart be tempted to cut corners in order to win over and subsequently retain the loan accounts of its retail suppliers? Would retail suppliers who do large volumes of business with Wal-Mart feel pressured, whether the pressure is overtly applied by Wal-Mart or is some other form of perceived market pressure, to do their banking business with Wal-Mart rather than with a community bank?

Also, would a Wal-Mart financial institution offer to service the banking needs of its retail competitors with the same vigor and incentives that it would extend to its own suppliers? Will the locally-owned

shoe store or pharmacy that competes with a Wal-Mart store receive the same attention and receive the same terms as the Wal-Mart supplier, at a time when Wal-Mart's business plan is to undermine and defeat the business interests of its local competition?

With well over 3,000 retail stores, Wal-Mart is primed for a financial institution branching network that has not been contemplated by state or federal legislatures. The impact that Wal-Mart's low cost, nationwide branching chain would have on community banks operating throughout the United States must be fully explored. The branching laws of the United States and of the individual states were carefully and delicately balanced to reflect political compromises and competitive banking interests. Allowing Wal-Mart to compete as a financial institution with its ready-made delivery system in numerous states would create a wide disparity between the capabilities of Wal-Mart on the one hand and the intentions of legislatures and the competitive opportunities of community banks on the other hand. Although current laws would restrict a Wal-Mart industrial bank charter from exercising interstate branching rights, the best way to keep the genie in the bottle is to prohibit the retail giant from obtaining powers that will enable it to operate as a financial institution.

Another concern is what a Wal-Mart financial institution will do with the deposits that it amasses from its customer base. Is there any guaranty that those deposits will be committed to the credit needs of the local community, or will they possibly be redirected instead to Wal-Mart headquarters?

Again, when considering Wal-Mart's application for federal deposit insurance and for an industrial bank charter, the FDIC need not ignore established facts. Wal-Mart's historic business model is to enter a target marketplace and obliterate the retail competition. This business model, as applied to financial institutions, should not receive the approval of the FDIC or other banking regulators. The concentration of resources and business in a retail scenario is, in CBAI's opinion, unhealthy for local communities. But the concentration of *banking* resources under that same business model is both unhealthy and dangerous to the community and to the banking system. If Wal-Mart is able to bridge the longstanding gulf between banking and commerce, consumers and commercial entities will ultimately find themselves with fewer choices for the delivery of financial services under competitive terms. A new, enormous financial institution will potentially challenge the ability of regulators to enforce safety and soundness standards and to police compliance with banking laws and regulations on a level playing field when compared to the regulators' supervisory scrutiny over smaller, community banks. The deposit insurance safety net's capacity to deal with a failure of a financial institution of such size is speculative, and in all likelihood would result in options ranging from the "too big to fail" predictions proffered by many community bank advocates to large deposit insurance premium assessments that would be needed to bolster the depleted deposit insurance safety net.

All of these concerns and questions raise legitimate issues regarding how Wal-Mart will compete, and how Wal-Mart will be regulated, once it establishes itself in the financial institution marketplace that it has attempted to encroach upon for the past several years. Having been defeated in its initial efforts, it

now returns with a "milder" request crafted to pass the first layer of regulatory scrutiny. CBAI believes that any review of the Wal-Mart application would be short-sighted if it did not include a more complete projection of what Wal-Mart intends to do with respect to the delivery of financial services. By virtue of Wal-Mart's earlier visits to the front door, its plans should be clear enough. Although it may seem difficult to analyze an application by projecting "what if" scenarios regarding the future of a Wal-Mart industrial bank charter, it is equally difficult to project how future business plans or regulatory changes or loopholes may provide an opportunity for this retail giant to escape from the boundaries of its current application and leap over the wall that currently and judiciously separates banking and commerce. The best, and perhaps the only, way to assure that such an opportunity does not arise and is not seized upon is to keep the front door, the side door and the back door locked, and to keep the genie in the bottle.

CBAI respectfully urges the FDIC to deny Wal-Mart's application for all of the reasons and because of all of the unresolved questions cited above. We also strongly recommend public hearings at which these issues, and others raised in letters submitted by opponents of the Wal-Mart application, can be thoroughly explored.

Thank you for your attention and consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jerry D. Cavanaugh". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jerry D. Cavanaugh
General Counsel
Community Bankers Association of Illinois